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# In the Supreme Court of the United States

OCTOBER TERM, 1965

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

ALLIS-CHALMERS MANUFACTURING COMPANY AND INTERNATIONAL UNION, UAW-AFL-CIO (LOCALS 248 AND 401)

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on March 11, 1966.

## OPINIONS BELOW

The opinion of the court of appeals, sitting *en banc* (Appendix A, *infra*, pp. 1a-32a), is reported at 358 F. 2d 656.[1] The Board's decision and order (P.A. 3-14, 15-25)[2] are reported at 149 NLRB 67.

[1] The earlier opinion of a panel of the court, which was withdrawn, is set forth in relevant part in Judge Kiley's dissenting opinion (App. A, *infra*, pp. 18a-29a).

[2] "P.A." refers to the appendix to the Company's brief in the court below.

## JURISDICTION

The judgment of the court of appeals was entered on March 11, 1966 (App. A, *infra*, pp. 33a–34a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. 160(e)).

## QUESTION PRESENTED

Whether a union which fines a member for crossing the union's picket line established in support of a lawful strike authorized by a majority of the union's membership and attempts to collect such fine by court action, thereby restrains or coerces an employee in the exercise of a right guaranteed by Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of the Act.

## STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*), in addition to those set forth in Appendix B, *infra*, pp. 35a–36a, are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *.

## STATEMENT

Locals 248 and 401 of the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, have, for many years, represented the production and maintenance employees of the respondent, Allis-Chalmers Manfacturing Company, at its plants in West Allis and La Crosse, Wisconsin (P.A. 4–5).[3] The collective bargaining agreements between the parties contain a union security provision, which requires an employee to become and remain "a member of the Union * * * to the extent of paying his monthly dues and initiation fees, if any" (P.A. 17, 30, 35; Stip. Exh. 1A, Art. II). Pursuant to this provision, all of the non-probationary employees in the bargaining units have been members of the Union at all times relevant to this proceeding (P.A. 17, 30–31, 35).

The UAW constitution provides a three-step procedure for calling a strike. First, a membership meeting of the local union is held to determine whether a formal strike vote shall be taken. Second, if a majority agrees to take a strike vote, the Local Union Executive Board notifies all the members, they are polled

[3] The Union was permitted to intervene as a party in the court of appeals.

by secret ballot, and a strike is authorized if endorsed by two-thirds of those voting. Third, the International Executive Board must approve the strike (P.A. 31–32, Stip. Exh. 4, Art. 50). The UAW constitution further requires members to "support strike action" taken in accordance with the constitution (*id.*, Art. 2, Sec. 3), and provides for sanctions for violation of this undertaking (see n. 5, *infra*).

In 1959, and again in 1962, the Union called a strike against the Company, in furtherance of new contract demands, and established picket lines in front of the Company's plants. Each strike was called in accordance with the foregoing procedure (App. A, *infra*, p. 2a). Although most of the employees in the bargaining unit joined the strikes and refused to cross the picket line, some ignored the line and went to work (P.A. 5, 17, 18, 19–20).[4]

After each strike, the Union charged the members who had crossed the picket line with violating the UAW constitution and bylaws, and, after formal adversary hearings before Union trial boards, found that they had engaged in "conduct unbecoming a Union member" and fined them in amounts varying from $20.00 to $100.00 (P.A. 17–18, 19–20, 32, 34, 36, 37).[5] Some of the members paid the fines in whole or

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[4] In the 1959 strike, 175 employees out of a unit of 7,400 went to work at West Allis, and 2 employees went to work at La Crosse. In the 1962 strike, 30 out of a unit of 5,500 went to work at West Allis, and 4 out of 625 went to work at La Crosse (P.A. 17–18, 19–20).

[5] The UAW constitution (Art. 30, Sec. 10) provides that, if a member is found to have violated the union's rules:

> * * * the Trial Committee may, by a majority vote, repri-

in part, but others refused to pay. The Union commenced actions to collect the fines in the Wisconsin courts.[c] It made no effort to procure the discharge, or otherwise affect the employment status, of members who refused to pay the fines. No member has been expelled or suspended from the Union, nor has any resigned, for any reason relating to the disciplinary proceedings (P.A. 5, 19–20; 35, 37).

The Company filed charges with the Board alleging that the Union's assessment and attempted collection of the fines constituted restraint and coercion of the employees in the exercise of their right to refrain from participation in union activities, in violation of Section 8(b)(1)(A) of the Act. The Board (with Member Leedom dissenting) held that the conduct complained of did not violate that section, and dismissed the complaint issued by the General Counsel (P.A. 3–14).

The Company petitioned the court below to review the Board's dismissal order. A panel of the court (Judges Kiley, Knoch and Castle) upheld the Board's

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mand the accused; or it may, by a two-thirds (⅔) vote, assess a fine not to exceed one hundred dollars ($100) with automatic suspension, removal from office or expulsion in the event of the failure of the accused to pay the fine within a specified time; or it may, by a two-thirds (⅔) vote, suspend or remove the accused from office or suspend or expel him from membership in the International Union.

[c] In a test suit brought against one member who refused to pay a fine, the Union obtained a judgment in the County Court of Milwaukee County, Wisconsin, which the Circuit Court of Milwaukee County affirmed. The case is pending before the Wisconsin Supreme Court (P.A. 19; App. A, *infra*, p. 2a, n. 1).

decision. Following a rehearing *en banc,* the court (with Chief Judge Hastings, and Judges Kiley and Swygert dissenting) withdrew its earlier opinion and held that the Union's action violated Section 8(b)(1)(A) of the Act (App. A, *infra,* pp. 1a–32a). The court accordingly set aside the Board's order dismissing the complaint, and remanded the case to the Board for further proceedings (App. A, *infra,* pp. 33a–34a).

## REASONS FOR GRANTING THE WRIT

The decision below proscribes the enforcement of internal, union discipline against members who, having voluntarily joined the union, crossed picket lines established by the vote of a majority of the members in pursuit of the legitimate economic objectives of the union. The question involved is, as the court below recognized (App. A, *infra,* p. 3a), of "national significance * * * to management and labor alike * * *." It is also of grave consequence to the system of collective bargaining developed under the National Labor Relations Act, striking at the heart of labor's capacity for concerted action and responsible self-control.[7] In the light of the manifest importance of the question presented, as well as the close division of the court below, review by this Court is clearly warranted.

The court below misinterpreted Section 8(b)(1)(A) of the National Labor Relations Act in holding that the

[7] See Summers, *Legal Limitations on Union Discipline,* 64 Harv. L. Rev. 1049, 1066 (1951); and n. 12, p. 11, *infra.*

invocation of union disciplinary proceedings to penalize conduct unquestionably inimical to the effective functioning of the union in pursuit of its legitimate goals constitutes restraint or coercion within the meaning of that section (App. A, *infra*, pp. 7a–8a). The court also erred in concluding that, under the union security agreement between the Union and the Company, the maintenance of union membership by the delinquent members was involuntary (App. A, *infra*, p. 9a).

1. Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union to "restrain or coerce" employees in the exercise of rights guaranteed by Section 7. Section 7 in turn guarantees to employees both the right to form, join or assist labor organizations and "the right to refrain from any or all such activities." Since the imposition and attempted collection of a fine for failure to adhere to a union policy tend, in a literal sense, to restrain or coerce union members (who are also employees) to assist the union, the court below concluded that such action was proscribed by Section 8(b)(1)(A). But that conclusion is based on the court's assumption that the "statutes in question present no ambiguities whatever, and therefore do not require recourse to legislative history, for clarification" (App. A, *infra*, p. 7a). *National Labor Relations Board* v. *Drivers Local Union No. 639* (*Curtis Bros.*), 362 U.S. 274, teaches, however, that Section 8(b)(1)(A) cannot be read literally to cover all union action which tends

to restrain or coerce employees in the exercise of their Section 7 rights.[8] The legislative history of the Taft-Hartley Act and the 1959 amendments show that Congress did not intend to preclude a union from disciplining its members—by such traditional means as fines, suspension, or expulsion—for violating a reasonable union rule like that here.[9]

(a) Section 8(b)(1)(A) was introduced on the floor of the Senate during the debate on the amendments to Section 8(a)(3) and the new Section 8(b)(2),[10] which substituted the union shop for the closed shop and made it an unfair labor practice for a union, no less than an employer, to discriminate against an employee to encourage or discourage union membership. In making the latter changes, Congress indicated that its policy was "to insulate employees' jobs from their organizational rights" (*Radio Officers' Union* v. *National Labor Relations Board*, 347 U.S. 17, 40). That is, under a union security agreement, the union could cause an employee to be fired from his job only for failure to pay regular dues and initiation

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[8] In *Curtis*, the Court held that Section 8(b)(1)(A) did not reach peaceful picketing by a minority union to secure recognition.

[9] A union has a legitimate interest in requiring its members to support a lawful strike duly authorized by the membership. As the Board stated (P.A. 7):

> We cannot conceive of a subject which would be more within its competence, since it involves the loyalty of its members during a time of crisis for the union. The Act does not deprive a union of all recourse against those of its own members who undermine a strike in which it is engaged. * * *

[10] These provisions are set forth in App. B, *infra*, pp. 35a–36a.

fees; no other union rule or membership obligation could be enforced by affecting the employee's employment status. When Senator Pepper protested that this would deprive the union of power to protect itself against company spies in its ranks, wildcat strikers, and those who opposed what the majority of the union felt was in the union's best interests (2 Leg. Hist. 1094,[11] 93 Cong. Rec. 4191), Senator Taft answered (2 Leg. Hist. 1097, 93 Cong. Rec. 4193):

> The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion.

(b) Section 8(b)(1)(A), which the Senate considered immediately after the foregoing discussion, was not intended to erase the deliberate line between enforcing reasonable union rules by affecting the employee's job and by means short thereof, which Congress drew in amending Section 8(a)(3) and adding Section 8(b)(2). As the Court pointed out in the *Curtis* case, *supra,* the examples given in the debates show that Section 8(b)(1)(A) was designed essen-

[11] "Leg. Hist." refers to the Legislative History of the Labor-Management Act, 1947 (G.P.O., 1948).

tially to prevent strong-arm tactics and threats of job loss in organizational campaigns. None of the active proponents of the measure suggested that it would limit the preexisting right of a union to discipline its members—by such traditional means as fines, suspension, or expulsion—for violating reasonable union rules or policies. Indeed, when Senator Holland introduced the proviso to Section 8(b)(1)(A) (*supra*, p. 3), to make clear that the section did not affect the area of internal union affairs, Senator Ball readily accepted it, stating (2 Leg. Hist. 1200; 93 Cong. Rec. 4433):

> That modification [the proviso] is designed to make it clear that we are not trying to interfere with the internal affairs of a union that is already organized. All we are trying to cover is the coercive and restraining acts of the union in its effort to organize unorganized employees. * * * The modification covers the requirements and standards of membership in the union itself.

(c) The Labor-Management Reporting and Disclosure Act, enacted in 1959, confirms the above analysis. Although that statute does regulate internal union affairs and provides a "bill of rights" for union members, Congress recognized (Section 101(a)(5), 29 U.S.C. 411(a)(5)) that a union member "may be fined, suspended, expelled, or otherwise disciplined" provided that certain procedural safeguards were observed. Moreover, Congress added a proviso (Section 101(a)(2), 29 U.S.C. 411(a)(2)) disclaiming any intent "* * * to impair the right of a labor organization

to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution * * *." It is hardly likely that Congress would have adopted these provisions, allowing the enforcement of reasonable union rules, had it 12 years earlier flatly interdicted union fines under Section 8(b)(1)(A).

(d) The court of appeals recognized (App. A, *infra*, p. 4a) and the Company conceded (Brief in the court of appeals, pp. 26–27) that, under the circumstances here involved, the Union could expel the offending members without running afoul of the Act. Indeed, the proviso to Section 8(b)(1)(A) is quite explicit on this point, for it states that that section "shall not impair the right of a labor organization to prescribe its own rules with respect to the * * * retention of membership therein * * *." The issue, therefore, is not *whether* a union may, by appropriate disciplinary proceedings, impose sanctions but only *what* sanctions it may impose. However, once the legality of union disciplinary action is conceded, it is hard to see what rational purpose the Act might serve in authorizing expulsion while prohibiting fines. The use of fines as a disciplinary device finds widespread recognition in union constitutions[12] as well as in Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act (see *supra*, p. 10). According to one study of union disciplinary proceedings, "the most common form of penalty is the fine."[13] Furthermore,

[12] See Summers, *Disciplinary Procedures of Unions*, 4 Ind. & Lab. Rel. Rev. 15, 26–27 (1950).

[13] *Id.* at 26.

expulsion is commonly regarded as a more severe sanction than a fine. Expulsion will generally entail forfeiture of significant union insurance, pension and welfare benefits as well as disenfranchisement and exclusion from the councils of the collective bargaining agent.[14] Under the circumstances, Congress could not have intended so anomalous a reading of the Act as that adopted below.[15]

2. The decision below relies on the proposition (App. A, *infra*, p. 9a) that membership in the Union was "the result not of individual voluntary choice but of the insertion of a union security provision in the contract under which a substantial minority of the employees may have been forced into membership." From that premise the court concluded (*ibid.*) that compulsory membership entailed a forced submission to union discipline and thus the restraint or coercion forbidden by Section 8(b)(1)(A). The major premise of the court's reasoning, however, is erroneous, as the dissenting judges below pointed out (App. A, *infra*, pp. 12a–13a, 26a–27a, 29a–30a).

The fact is undisputed that the union security provision required an employee to become a union member only "to the extent of paying dues" (App. A, *infra*, p. 2a fn.). Consistent with Section 8(a)(3) of the Act,

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[14] *Id.* at 28–29; see Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 612, 622–623 (1959).

[15] There is no substance to the suggestion of the court of appeals (App. A, *infra*, p. 7a) that the fines here were excessive and therefore threatened to deprive employees of their wages. Since the record shows that the fines imposed ranged from $20 to $100 (App. A, *infra*, p. 2a fn.), no issue as to unduly burdensome fines is presented.

no more than a dues paying status could be required of the employees [16], and nothing in the record suggests that any further obligation was imposed in fact. On the contrary, the Union pointed out (Intervenor's Memorandum of Response to Petition for Rehearing, p. 3), and the Company did not dispute (Reply Brief for Petitioner on Rehearing En Banc, p. 12):

> Since the only obligation that the Union agreement with the Company imposes is the payment of monthly dues, no worker is required to take the oath and subject himself to the requirements of obedience to the common cause * * *.

It appears therefore, that, contrary to the court's assumption, each employee had a free choice either (1) to refrain from all union activities except to the extent of paying the required dues, or (2) to adhere to the union, take the prescribed oath of fidelity, participate in the union's affairs and abide by the union's rules and decisions. An employee who elected to pursue the latter course, like anyone else who joins a voluntary association, cannot properly be said to have been restrained or coerced when called upon to live up to his undertaking. For, as shown above, the legislative history of Section 8(b)(1)(A) and the basic plan of federal labor-management relations legislation demonstrate that Congress did not intend to bar a union from imposing normal disciplinary sanctions upon a member for

[16] See *Union Starch & Refining Co.* v. *National Labor Relations Board*, 186 F. 2d 1008 (C.A. 7), certiorari denied, 342 U.S. 815. Cf. *National Labor Relations Board* v. *General Motors Corp.*, 373 U.S. 734.

breach of an obligation voluntarily assumed when he voluntarily joined the union.

## CONCLUSION

The question whether Section 8(b)(1)(A) bars a union from fining its members for violation of union rules is an important and recurrent one in the administration of the Act.[17] Since the pertinent considerations have been fully canvassed in the majority and dissenting opinions of the court below, there is no occasion for further clarification of the problem by other courts of appeals;[18] it is now ripe for adjudi-

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[17] In addition to the present case, see, *e.g.*, *Wisconsin Motor Corp.*, 145 NLRB 1097; *Associated Home Builders of the Greater East Bay*, 145 NLRB 1775, remanded for further proceedings, 352 F. 2d 745 (C.A. 9) Cf. *Local 138, Int'l Union of Operating Engineers (Charles S. Skura)*, 148 NLRB 679; *H. B. Roberts, Business Manager of Local 925, Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB 674, enforced *sub nom. Roberts* v. *National Labor Relations Board*, 350 F. 2d 427 (C.A. D.C.); but see *United Steelworkers, Local No. 4028 (Pittsburgh-Des Moines Steel Co.)*, 154 NLRB No. 54. (In *Skura* and *Roberts*, the Board held that Section 8(b)(1)(A) did bar a union from fining a member for filing unfair labor practice charges with the Broad. In the Board's view, a union rule prohibiting the filing of charges with the Board went beyond the area of internal union affairs and impinged upon the Board's processes—a channel which Congress intended to leave open.)

[18] The only other case involving the issue which is now in the court of appeals is also in the Seventh Circuit. *Scofield* v. *National Labor Relations Board*, No. 14698, petition to review *Wisconsin Motor Corp.*, 145 NLRB 1097.

cation by this Court. The petition for certiorari should, therefore, be granted.

Respectfully submitted.

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